

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CLOTILDUS MORAN, as Trustee for the  
MORAN FAMILY TRUST,

UNPUBLISHED  
April 16, 2015

Plaintiff/Counter Defendant-  
Appellant,

v

OLG II, L.L.C., and TDJ DEVELOPMENT,  
L.L.C.,

No. 323749  
Livingston Circuit Court  
LC No. 14-028114-CZ

Defendants/Counter Plaintiffs-  
Appellees.

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Before: O'CONNELL, P.J., and FORT HOOD and GADOLA, JJ.

PER CURIAM.

Plaintiff, the Moran Family Trust through its trustee Clotildus Moran, appeals as of right the trial court's order granting defendants, OLG II, L.L.C. and TDJ Development, L.L.C. (collectively, the developers), summary disposition under MCR 2.116(I) and ordering specific performance. The issue at the heart of this case is whether Moran was entitled to relief under a land contract between herself and the developers. Because we conclude that the trial court properly determined Moran was not entitled to relief, we affirm.

**I. FACTUAL BACKGROUND**

In September 2004, the trust and the developers entered into a land contract. It provided that the trust would convey to the developers property in Livingston County for \$670,000. The initial contract provided that the developers paid \$100,000 up front and would pay the remaining \$570,000 in monthly installments. When the trust was paid in full, it agreed to execute a warranty deed conveying to the developers title to the land. The contract specifically referenced the establishment of a condominium project. It also provided in an addendum that the developers could not transfer property without Moran's written consent and, "[u]pon any sale or transfer, whether allowed with the written permission of [Moran] or not, [the developers] shall pay the entire outstanding balance owed . . . ."

In December 2005, the developers recorded a master deed, declaring their intent to establish a residential condominium project known as "Hooper's Creek." Part of the property establishing the condominium project included the Moran property. An undated "rider" to the

land contract provided that the developers would pay Moran on the land contract at a rate of \$26,800 a lot. In December 2012, the developers and trust executed an amendment to the land contract that provided that “the purchase price to be paid [Moran] by [the developers] for the remaining nineteen (19) lots remaining in this development shall equal one-third (1/3) of the gross sales price of said property upon sale of said lot(s).” As part of that amendment, the developers would continue to make “best efforts to market the property.”

In January 2013, the developers entered into an agreement with Hadley Home Builders, Inc. (Hadley). The agreement provided that Hadley would purchase 18 parcels for \$20,000 and one parcel for \$25,000. The developers sent Moran payments for seven lots in the project. In March 2014, the developers attempted to send Moran payments for three more lots. However, Moran returned the payments for those lots.

In June 2014, Moran filed her complaint in this action, alleging that the developers breached the land contract by transferring property to Hadley without Moran’s written consent. Moran sought declaratory relief. The developers filed a counterclaim, contending that Moran had failed to comply with the land contract by refusing to accept payment for the remaining parcels. The developers requested specific performance.

On August 22, 2014, Moran filed for summary disposition under MCR 2.116(C)(10). Moran asserted that the developers breached the land contract by not obtaining her written consent to transfer the property. On September 9, 2014, the developers filed a motion for summary disposition under MCR 2.116(C)(8) and (10), alleging that they were entitled to specific performance because they were willing to pay Moran the remaining amount owed under the land contract.

The trial court heard arguments on the motion on September 16, 2014. During arguments, the trial court noted that Moran had not pleaded allegations of fraud in the land contract and repeatedly asked Moran what relief she was seeking. After Moran provided confusing and unresponsive answers, the trial court granted summary disposition in favor of the developers under MCR 2.116(I). The trial court ordered the parties to close within seven days. It noted that if Moran refused to close on the property, it would require her to show cause why she should not be held in contempt of court.

On September 22, 2014, Moran filed an emergency motion to extend closing and stay the trial court’s decision pending appeal. Moran contended that the trial court’s order threatened to moot her possible appeals and violated her state and federal rights to due process. The trial court heard the motion on September 23, 2014. The trial court noted it had not granted the developers’ motion for summary disposition, but rather granted summary disposition under MCR 2.116(I) because Moran was not entitled to the relief she sought. The trial court also opined that Moran’s own actions defied her claim because Moran accepted payments “up until the end.” The trial court refused to extend closing because allowing Moran to amend her complaint would be futile, and it refused to stay its decision pending appeal.

Moran filed an emergency motion to stay the trial court’s decision pending appeal, which this Court granted on September 25, 2014. *Moran Family Trust v OLG II LLC*, unpublished

order of the Court of Appeals issued September 25, 2014 (Docket No. 323749). We also sua sponte ordered this appeal expedited. *Id.*

## II. SUMMARY DISPOSITION

Moran contends that the trial court improperly granted summary disposition in favor of the developers and the manner in which it did so deprived Moran of due process. We disagree.

This Court reviews de novo the trial court's decision on a motion for summary disposition. *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008). We review de novo issues of constitutional law, including whether the trial court's actions deprived a party of due process. *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005).

MCR 2.116(I)(1) provides that “[i]f the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits and other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay.” When considering a motion for summary disposition, the trial court may grant summary disposition in favor of a party opposing a motion. MCR 2.116(I)(2). “However, the trial court may not do so in contravention of a party's due process rights.” *Al-Maliki v LaGrant*, 286 Mich App 483, 489; 781 NW2d 853 (2009). And if the grounds are based on MCR 2.116(C)(8) or (10), the trial court should grant the party an opportunity to amend their pleadings unless an amendment would be futile. MCR 2.116(I)(5).

In this case, the trial court granted summary disposition under MCR 2.116(I). If a party does not address the basis of the trial court's decision, we need not even consider granting them relief. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004). By completely failing to address this ground for summary disposition in her brief on appeal, Moran has arguably abandoned this issue. However, we will briefly explain why the trial court's decision was correct.

In this case, Moran's complaint sought declaratory relief. What Moran did not allege or seek in this case is as important as what Moran did seek: contrary to Moran's assertion on appeal that this case concerned fraud, Moran did not assert fraud in the land contract, the amendments, or provide any fact-based allegations of fraud at any of the motion hearings. Instead, Moran contended that the developers' deeds to Hadley violated the terms of the parties' land contract. Moran also did not seek monetary damages.

However, even presuming that the developers filed a master deed and transferred property without her written permission, Moran's remedy under the land contract is to accelerate the balance due on the land contract. The developers have repeatedly tendered that amount, but Moran has refused to accept such tender. Even presuming the facts in Moran's complaint are true—that the developers did in fact breach the land contract in the manner Moran asserted in her complaint—the remedy under the contract was payment of the balance due on the contract. This was the exact remedy Moran refused to accept from the developers. The trial court properly determined that summary disposition was appropriate in this case, and the extent of the trial court's relief was consistent with the parties' land contract.

Moran also asserts that the trial court erred by stating that it would not give Moran an opportunity to amend her pleadings. Moran does not provide any law supporting this position, and Moran's failure to rationalize the basis for her claim is not adequate to present this issue for this Court's review. See *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008). And the exception in MCR 2.116(I)(4) implies that there are instances in which a trial court may deny a party an opportunity to amend pleadings—specifically, where such an amendment would be futile. Moran does not address the trial court's determination that an amendment would have been futile. We conclude that Moran has abandoned this issue by failing to support her argument.

Moran also contends that the trial court's decision deprived her of due process. We disagree.

Under both the Michigan and United States constitutions, the government may not deprive a person of property without due process of law. US Const, Am V; Const 1963, art 1, § 17; *Reed*, 265 Mich App at 159. "Due process in civil cases generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker." *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995).

In this case, Moran was aware of the nature of the proceedings because she filed a motion for summary disposition. Even had the developers not also filed a motion for summary disposition, the trial court properly and timely ruled on Moran's motion under MCR 2.116(I). Further, the trial court gave Moran the opportunity at the summary disposition hearing to explain her position and present any additional facts. The trial court also gave Moran the opportunity to explain her position at the emergency hearing on Moran's motion to stay the decision pending appeal. We conclude that the proceedings in this case provided Moran with sufficient notice and opportunity to be heard.

### III. IMMEDIATE CLOSING AND CONTEMPT

Moran asserts that the trial court's decision to order immediate closing was irregular and improper because it threatened to moot Moran's appeal by placing Moran's property out of her reach. This Court will not decide moot issues. *Federated Publications, Inc v Lansing*, 467 Mich 98, 112; 649 NW2d 383 (2002). An issue raised on appeal is moot if the party has already received the remedy that he or she seeks on appeal. See *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). While we agree that the trial court's decision threatened to deprive Moran of a meaningful appeal, this Court's decision to stay the trial court's decision pending appellate proceedings rendered this issue moot. Moran has not been deprived of a meaningful appeal.

Finally, Moran contends that the trial court's statement that it would hold Moran in contempt if she did not appear at closing was improper. This Court will not consider abstract legal questions that do not rest on existing facts. *People v Richmond*, 486 Mich 29, 34; 782 NW2d 187 (2010). A matter is moot if this Court's ruling will not have a practical legal effect on the controversy. *Federated Publications, Inc*, 467 Mich at 112. Because the trial court did

not actually hold Moran in contempt, this Court's opinion would not rest on existing facts and would not have any practical effect on controversy.

We affirm. As the prevailing party, the developers may tax costs. MCR 7.219.

/s/ Peter D. O'Connell  
/s/ Karen M. Fort Hood  
/s/ Michael F. Gadola